

Application Serial No. 09/939,412
Amendment dated November 7, 2006
Reply to Office Action dated August 7, 2006

REMARKS

Claims 1-7, 14-16, and 41-43 are pending. Claims 14 and 15 are objected to. Claims 1-7, 13, 16, 41, and 42 have been rejected. Claim 13 has been cancelled. New claim 43 has been added.

Allowable Subject Matter

Claims 14 and 15 were objected to as depending from a rejected base claim. Claim 14 has been rewritten in independent form to incorporate all the limitations of the base claim and any intervening claims. Applicants respectfully submit the amended independent Claim 14, as well as claims 15, 16, and 41-43 which depend therefrom, are now in condition for allowance.

Rejections Under 35 U.S.C. §102(b)

Claims 1-3 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,290,312 to Kojimoto et al. ("Kojimoto '312").

Kojimoto '312 discloses prosthetic vertebra 10, shown in Fig. 2, including first component 18 and second component 20. Second component 20 is sized slightly smaller than first component 18 to allow second component 20 to slide within and relative to first component 18. Second component 20 includes first side 52 and abutting end surface 58. Flanged portion 72 extends outwardly from abutting end surface 58. Two threaded apertures 74, 76 are drilled through flanged portion 72. Threaded bolts 78, 80 may threadingly engage apertures 74, 76 at an oblique angle relative to axis 20a of second component 20. With prosthetic vertebra 10 positioned between adjacent vertebra, as shown in Fig. 1, screws 78, 80 may extend from apertures 74, 76 to engage bone.

Applicants respectfully submit that amended independent Claim 1 is not anticipated by Kojimoto '312, as Kojimoto '312 fails to disclose or suggest each and every limitation called for in amended independent Claim 1.

Specifically, amended independent Claim 1 calls for, *inter alia*, a bone plate assembly having a bone plate including first and second portions defining an angle therebetween, each of the first and second portions having at least one hole therein, a screw extending through a hole in one of the first and second portions, the screw threadingly engaging another hole in the other of the first and second portions, and an intermediate portion of the screw between the at least one

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hole in the first extending portion and the at least one hole in the second extending portion capable of engaging bone.

Assuming, *arguendo*, that Kojimoto '312 discloses first and second portions having at least one hole therein and a screw extending through the hole in one of the first and second portions and threadingly engaging another hole in the other of the first and second portions, Kojimoto '312 fails to disclose or suggest an intermediate portion of the screw between the at least one hole in the first extending portion and the at least one hole in the second extending portion capable of engaging bone. In contrast, the portion of the screw of Kojimoto '312 between the at least one hole in the first extending portion and the at least one hole in the second extending portion cannot engage bone as it is contained entirely within flanged portion 72 of second component 20.

For the foregoing reasons, Applicants respectfully submit that amended independent Claim 1, as well as Claims 2 and 3 which depend therefrom, are not anticipated by Kojimoto '312.

Rejections Under 35 U.S.C. §103(a)

Claims 4 and 5 are rejected under 35 U.S.C. §103(a) as being obvious over Kojimoto '312 in view of U.S. Patent No. 4,823,780 to Odensten et al. ("Odensten '780"). Claims 6 and 7 are rejected under 35 U.S.C. §103(a) as being obvious over Kojimoto '312 in view of U.S. Patent No. 3,716,050 to Johnston ("Johnston '050"). In rejecting these claims, the Examiner relied upon Kojimoto '312 as disclosing all the limitations of amended independent Claim 1 from which Claims 4-7 depend. As indicated above, Kojimoto '312 does not disclose or suggest an intermediate portion of the screw between the at least one hole in the first extending portion and the at least one hole in the second extending portion capable of engaging bone as called for in amended independent Claim 1. Therefore, Applicants respectfully request withdrawal of the 35 U.S.C. §103(a) rejection of Claims 4-7.

It is believed that the above represents a complete response to the Official Action and reconsideration is requested. Specifically, Applicants respectfully submit that the application is in condition for allowance and respectfully requests allowance thereof.

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In the event Applicants have overlooked the need for an additional extension of time, payment of fee, or additional payment of fee, Applicants hereby petition therefore and authorize that any charges be made to Deposit Account No. 02-0385, Baker & Daniels.

Should the Examiner have any further questions regarding any of the foregoing, he is respectfully invited to telephone the undersigned at (260) 424-8000.

Respectfully submitted,



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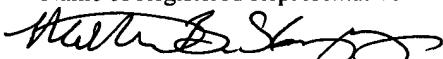
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I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on: November 7, 2006

MATTHEW B. SKAGGS, REG. NO. 55,814

Name of Registered Representative



Signature

November 7, 2006

Date